

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

GILBERTO ACERO-GARCIA,

Defendant.

OFFICE OF THE CLERK

8:13CR7

STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS AND ORDER  
THEREON

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Deborah R. Gilg, United States Attorney, and Christopher L. Ferretti, Special Assistant United States Attorney, and defendant Gilberto Acero-Garcia, by and through and with the advice and consent of defense counsel, Carlos Monzón, that:

1. Defendant agrees to execute this stipulation and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it.
2. In the present case, material witness Marcelo Jimenez-Arias:
  - a. Is an alien with no lawful right to enter or remain in the United States;
  - b. Sought and obtained employment from the defendant, himself a prior employee of DCS Sanitation Management, Inc., who had authority to hire new employees;
  - c. Was arrested in the United States on or about January 16, 2013, working for DCS Sanitation Management, Inc., at Greater Omaha Packing, where defendant had hired him knowing or acting in reckless disregard of the fact that he was an alien with no lawful right to enter or remain in the United States;
  - d. Had paid defendant in cash in exchange for employment at DCS Sanitation Management, Inc.;
  - e. Received false names from defendant associated with valid Social Security numbers in order to create an employment record that appeared to satisfy the requirements of section 274A(b) of the Immigration and Nationality Act;

- f. Was harbored in this manner by defendant from between on or about January 1, 2010 and up to and including December 14, 2012, and;
- g. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

3. After the court has ordered the material witness released, pursuant to this stipulation and joint motion, if defendant does not plead guilty to a violation of 8 U.S.C. § 1324, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- a. The stipulated facts set forth in paragraph 2 above shall be admitted as substantive evidence;
- b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of an unavailable witness;
- c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness who made the “testimonial” hearsay statements, defendant waives the right to confront and cross-examine the material witness in this case; and,

4. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

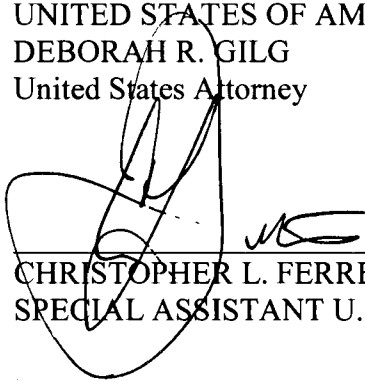
Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness to the Department of Homeland Security for return to their country of origin.

It is **STIPULATED AND AGREED** this date.

Respectfully submitted,

UNITED STATES OF AMERICA  
DEBORAH R. GILG  
United States Attorney

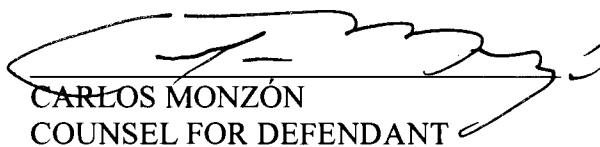
3/7/13  
Date

  
CHRISTOPHER L. FERRETTI  
SPECIAL ASSISTANT U.S. ATTORNEY

3/7/13  
Date

X   
GILBERTO ACERO-GARCIA  
DEFENDANT

3/7/13  
Date

  
CARLOS MONZÓN  
COUNSEL FOR DEFENDANT

**ORDER**

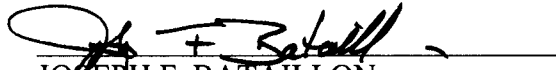
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence; and

**IT IS ORDERED** that the above-named material witness be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 3/7/2013

  
JOSEPH F. BATAILLON  
UNITED STATES DISTRICT JUDGE